

BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

July 2, 2008

Meeting

Mr. Poff called this meeting of the Tipp City Board of Zoning Appeals to order at 7:30 p.m.

Roll Call

Roll call showed the following Board Members present: Ron Poff, Stacy Wall, John Borchers and David Berrett. Others in attendance: City Planner/Zoning Administrator Matthew Spring, and Board Secretary Kimberly Patterson.

Citizens attending the meeting: Carrie Rowland, Charles Rowland, George Hammer, Nellie Hammer, and Bud Schroeder.

Board Minutes 5-21-07

Chairman Poff asked for discussion. There being none, Mr. Borchers **moved to approve the May 21, 2007, meeting minutes as written**, seconded by Mr. Berrett. **Motion carried.** Ayes: Borchers, Berrett, and Wall. Nays: None. Mr. Poff abstained from the vote.

Chairman's Introduction

Chairman Poff explained the guidelines and procedures for the meeting and public hearings. He advised the applicants that a decision of the Board could be appealed to City Council within 10 days. If the Board granted the applicant's request, the applicant may file the appropriate permits after the 10-day waiting period has expired.

Citizen Comments

There were no citizen comments on items not on the agenda.

Administration of Oath

Mrs. Patterson, notary, swore in citizens wishing to speak and Mr. Spring.

New Business Case No. 12-08 Rowland Fence Height Variance Request

New Business

A. Charles and Carolyn Rowland - 747 Hawk Avenue, Tipp City - Lot: IL 3328 – The applicant requested a variance of 3' to the maximum height of 6' for a fence located on an interior side yard noted in Code §154.059(D)(14)(e)(2).

Present Zoning District: R-1B – Suburban Residential Zoning District
Code Section(s): §154.059(D)(14)(e)(2)

Mr. Spring stated that the applicant requested a variance of 3' to the maximum height of 6' for a fence located on an interior side yard noted in Code §154.059(D)(14)(e)(2) in conjunction with the construction of an in-ground swimming pool for the residence located at 747 Hawk Avenue. If approved, the fence would be 9' tall (from existing grade).

Mr. Spring reviewed the following Zoning Code Sections pertaining to the case:

Code §154.004 defines a fence as:

Any exterior partition made from rails, timbers, chain link, boards, stone, vegetation, vinyl or any other materials, which provides a physical and/or visual barrier along the boundaries of, or within a yard or lot. Hedges, retaining walls, and walls are considered fences.

Code §154.059(D)(14)(e)(2) indicates:

e. Height.

2. Interior Side Yard. Fences, walls and hedges shall not exceed six (6) feet in any interior side yard.

Code §154.059(D)(14)(e)(7) also states:

7. The combined height of fences on retaining walls shall be used in determining conformance with fence height.

Mr. Spring mentioned that the proposed fence combines a 3' tall retaining wall and a 6' tall wooden privacy fence for a total of 9 feet tall.

Mr. Spring noted the following history regarding 747 Hawk Avenue:

History

On October 22, 2007, a Zoning Compliance Permit (ZCP #5311) was granted for the construction of an in-ground swimming pool and required 6' tall privacy fence (enclosing the pool area) at 747 Hawk Avenue.

The pool had been constructed with the excess soil from the digging of the pool pushed off around the pool area creating a change in existing grade. In order to maximize the usable area around the pool, the applicant now requested to install a 3' tall retaining wall near the eastern property line prior to the placement of the required 6' privacy fence, which now would be placed ostensibly on top of the 3' retaining wall. The proposed retaining wall, plus the required 6' privacy fence would create a $\pm 9'$ tall exterior partition (fence) when viewed from the neighboring property to the east (740 Hawk Avenue). The proposed fence would be placed $\pm 2'$ from the eastern property line rather than the originally approved 5'. Although theoretically permissible, this change in grade and proposed position of the fence was not demonstrated in the original ZCP #5311.

Twenty-eight (28) linear feet of the proposed wall/privacy fence combination would be installed parallel to the eastern property line, with four (4) linear feet extending westerly from the southeastern corner of the wall/fence. The proposed wall/ fence combination would be a total of ± 32 linear feet in length, with ± 28 linear feet installed $\pm 2'$ from the eastern property line within the existing 5' utility easement. Code does allow the installation of fencing within utility easements with a "waiver" signed by the property owners which states:

Fences placed within utility easements are subject to removal by the utility companies when work is being done in their easements. Replacement of the fence is at the property owner's expense.

Mr. Spring explained the procedural requirements to grant the variances in this case as outlined in Sections §154.175(E)(1)&(9) §154.175(C) and §154.175(D) of the Tipp City Code of Ordinances.

Mr. Spring mentioned the following additional notes regarding the case:

- The property contained 5' utility easements along all side property lines, a 10' utility easement along the front property line, and a 20' utility easement/drainage easement along the rear property line. As stated above, the eastern span of the fence/wall combination will encroach into the side yard easement $\pm 3'$.
- If the requested variance was approved, a modified ZCP will be required to be submitted by the applicant and approved by the City.
- If the requested variance was approved, the applicant would be required to sign the "waiver" for placement of a fence within a utility easement.
- Per Code §154.059(D)(14)(f)(6), retaining walls greater than three (3) feet in height shall require the approval of the Tipp City Engineer prior to the issuance of an approved Zoning Compliance Permit, and may require a building permit in accordance with the Miami County Building Regulations Department.

Mrs. Patterson stated that one comment was received from Patti Yahney, 740 Hawk Avenue. Mrs. Yahney stated that she was in 100% favor of Mr. Rowland installing the fence and that the wall and fence both directly affected her property.

Mr. Spring stated that if the requested variance was granted, the applicant would be required to obtain an approved Zoning Compliance Permit and pay the required \$25 Permit fee.

Mr. and Mrs. Rowland approached the dais, 747 Hawk Ave. The Rowland's presented the Board with a photo from the construction of the home taken approximately in the fall of 2002. The photo proved that grade elevations were not disturbed by the installation of the swimming pool.

Board Members discussed the code in length regarding the total fence height which would include the retaining wall and the required 6' fencing. It was found safer to require the wood privacy fence be 6' foot for a total of 9' due to the fact that the retaining wall could act as a step up to the wood fence.

Chairman Poff asked for further discussion. There being none, Mr. Berrett **moved to grant a variance of 3' to the maximum height of 6' for a fence located on an interior side yard noted in Code §154.059(D)(14)(e)(2) for**

**Case No. 13-08
Sign Variance
Requests**

the residence located at 747 Hawk Avenue, seconded by Mrs. Wall.
Motion carried. Ayes: Berrett, Wall, Poff, and Borchers. Nays: None.

B. Bud Schroeder – Schroeder Tennis Center - 1459 Harmony Drive, Tipp City - Inlot: 3264 – The applicant requested a variance to Code §154.100(B)(5) to allow the placement of a third ground sign.
Present Zoning District: I-1 – Light Industrial Zoning District
Code Section(s): §154.100(B)(5)

Mr. Spring stated that in conjunction with a discussion with the Tipp City Board of Zoning Appeals Members at the May 21st, 2008 meeting, Bud Schroeder, owner of Schroeder Tennis Center requested a variance to allow the placement of a second ground sign at the Schroeder Tennis Center, 1459 Harmony Drive. Mr. Spring noted that one of the ground signs were removed before the public hearing which changed the request from a third ground sign to a second ground sign.

Mr. Spring reviewed the following Zoning Code Sections pertaining to the case:

Code §154.100(B)(5)states:

5. *Number. Ground signs shall be limited in number to 1 per lot or multiple lots if devoted to 1 specific use or user. Buildings on corner lots having at least 100 feet of frontage on 2 public rights-of-way may be entitled to 2 ground signs, 1 facing each public right-of-way, if they meet the following criteria:*
 - (a) *The total combined area of both signs shall not exceed 1½ times the maximum permitted area of a single ground sign for that use.*
 - (b) *The 2 signs shall be no closer than 2/3 the length of the longest public right-of-way frontage. The distance shall be measured by drawing two straight lines, measured from the edge of each sign, forming a 90 degree angle.*

The Schroeder Tennis Center is a single use on a single (non-corner) lot. Therefore, the Tennis Center was allowed one (1) ground sign per Code.

Mr. Spring explained the procedural requirements to grant the variances in this case as outlined in Sections §154.175(E)(1)&(9) §154.175(C) and §154.175(D) of the Tipp City Code of Ordinances.

Mr. Spring mentioned the following additional notes regarding the case:

- The Schroeder Tennis Center does not currently have any wall signage
- Schroeder Tennis Center had two (2) existing ground signs before the hearing. The one being a nonconforming changeable copy sign was removed prior to the public hearing
- The proposed ground sign meets the zoning requirements for

area, height, and setback

- If the variance was granted by the Board, a sign permit application would be required to be completed by the applicant and can be approved administratively.
- The Tipp City Sign Code requires that all ground signs include landscaping. The application material does not indicate this requirement. If the requested variance was approved, landscaping shall be required during the administrative permitting process per Code §154.099(D) as follows:

Landscaping. The base of all permanent ground signs shall be effectively landscaped with living plant material and maintained in good condition at all times. The minimum landscaped area shall extend at least 3 feet beyond all faces or supporting structures in all directions. Exposed foundations must be constructed with a finished material such as brick, stone, or wood, or be screened with evergreens to the top of the anchor bolts. The landscaped area shall include all points where sign structural supports attach to the ground.

Mrs. Patterson stated there were no neighbor's comments received regarding this case.

Mr. Bud Schroeder, 795 Cliffwood, approached the dais.

Board Members found the following regarding the case: The sign would be slightly angled toward the oncoming west-bound traffic; the sign would be illuminated only at night; the existing ground sign was not visible from west-bound traffic on the newly installed Kinna Drive; the dynamics of the lot had changed since 12 years ago when originally planned and per that current zoning code at the time, plus was on a dead-end street; Mr. Schroeder had the option of placing the sign as close to 10' or 14' to the property line.

Chairman Poff asked for further discussion. There being none, Mrs. Wall **moved to grant a variance to Code §154.100(B)(5) to allow the placement of a third ground sign at the Schroeder Tennis Center, 1459 Harmony Drive**, seconded by Mr. Berrett. **Motion carried.** Ayes: Wall, Berrett, Poff, and Borchers. Nays: None.

Old Business

There was none.

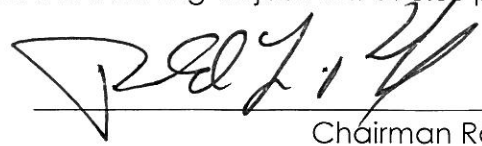
Miscellaneous

Board Members inquired if any applications had been received for the vacant position. Mrs. Patterson stated that one application was received but could not recall if the applicant requested to serve on this Board or the Restoration Board.

Adjournment

There being no further business, Mrs. Wall **moved to adjourn the meeting**, seconded by Mr. Poff and unanimously approved. **Motion**

carried. Chairman Poff declared the meeting adjourned at 8:08 p.m.

A handwritten signature in black ink, appearing to read "Ron Poff", written over a horizontal line.

Chairman Ron Poff

Attest:

A handwritten signature in blue ink, appearing to read "Kimberly Patterson", written over a horizontal line.

Mrs. Kimberly Patterson, Board Secretary